



Idaho State Board of Pharmacy

1199 W Shoreline Lane Ste 303 Boise, Idaho 83702-9103 <http://bop.idaho.gov>
P.O. Box 83720 Boise, Idaho 83720-0067 208.334.2356 208.334.3536 fax

March 28, 2019

Delivered via e-mail

Julia Sabrick
Health in Justice Action Lab
Northeastern University
360 Huntington Avenue
Boston, MA 02115
s.seymour@northeastern.edu

Re: Public Records Request to Idaho State Board of Pharmacy

Dear Ms. Sabrick:

On March 7, 2019, the Idaho State Board of Pharmacy ("Board") received your public records request submitted via email to Deputy Executive Director Berk Fraser. Your records request included fourteen (14) sections, each of which are addressed below:

1. Any and all records reflecting an agreement for purchase, acquisition, or licensing of, or permission to use, test, or evaluate Appriss's systems or services, including any product or service offered.

This section of your request, specifically use of the term 'reflecting', requires clarification. If you would like to clarify what is meant by 'reflecting', certain Board records may be available. Depending on the scope of your clarification, you may be responsible for the fees required to respond to this section of your request in accordance with Idaho Code section 74-102.

2. Any and all memoranda of understanding between the Idaho State Board of Pharmacy and any outside entity regarding the Idaho Prescription Monitoring Program.

The Board's records responsive to this section of your request are attached.

3. Any and all records including information about the algorithm that determines risk scores in the Idaho Prescription Monitoring Program, including but not limited to its source code, developer documentation, and operator manuals.

The Board does not have any records responsive to this section of your request.

4. Any and all research, technical reports, or internal audits that define and/or evaluate the Idaho Prescription Monitoring Program effectiveness or performance.

The Board does not have any records responsive to this section of your request. However, you may wish to review *The State Board of Pharmacy's Regulation of Prescription Controlled*

Substances, which is a report completed by the Idaho Legislature's Office of Performance evaluations in June of 1999. The report is publicly available online at <https://legislature.idaho.gov/ope/reports/r00009901/>.

5. Any and all research, technical reports, or internal audits that evaluate the Appriss risk assessment tool's effectiveness or performance.

The Board does not have any records responsive to this section of your request.

6. Any document containing a full list of the data fields in the Idaho Prescription Monitoring Program.

The Board's records responsive to this section of your request are attached.

7. De-identified records of algorithmic outputs (e.g. predictions or "red flags").

This section of your request may require clarification. Board staff is unsure what is intended by the phrase 'algorithmic outputs.' Assuming this phrase refers to any reports pertaining to public health and safety Board staff has generated from the PMP, the Board has numerous such reports dating back to 2012. However, all such reports contain confidential, personally identifiable health information and do not exist in a de-identified form.

Idaho Code section 74-102 authorizes the imposition of fees arising from the costs to Idaho taxpayers to respond to a public records request. Such fees are based upon the actual rate of pay of the lowest paid employee involved with responding to a request. The hourly rate, including salary and benefits, paid to the lowest paid employee that would be involved with responding to your request is \$31.49 per hour. In addition, the hourly rate for legal review is \$175.00 per hour. Legal review of the records responsive to your request may be necessary to evaluate any applicable public records exemptions under the Idaho Public Records Law.

Based on a preliminary review of your request and the Board's files, Board staff estimates thirty (30) hours of board staff time and two (2) hours of legal review will be needed to assemble and redact the responsive reports. Therefore, if you would like Board staff to proceed with responding to this section of your request, your estimated total due to Board staff will be \$1,249.70 (30 hours staff time x \$31.49 = \$944.70, plus 2 hours legal review x \$175 = \$350 totaling \$1,249.70).

If you would like Board staff to continue with this section of your request, please submit your advance payment to the Idaho State Board of Pharmacy within the next thirty (30) days. Upon receipt of your payment Board staff will promptly process this section of your request and provide you with the Board's responsive records not otherwise exempt from public disclosure. Board staff will record the hours required to locate, compile, review, and redact those responsive records and charge those costs against your payment. Any unused funds will be returned to you. If you do not wish to incur this expense, please notify me at your earliest convenience.

8. Any record showing the number of patients in the Idaho Prescription Monitoring Program by quarter and year (2006-present).

The Board's records responsive to this section of your request are attached.

9. Any record showing the number of prescribers and pharmacists in the Idaho Prescription Monitoring Program by quarter and year (2006-present).

Teresa Anderson, the Board's Prescription Monitoring Program Information Coordinator, previously sought clarification from you regarding this section of your request. At this time, Ms. Anderson has not received your clarification. Clarification is needed regarding the records sought in response to this section of your request. Please contact Ms. Anderson at your earliest convenience.

10. Any and all records containing Idaho State Board of Pharmacy analysis of whether and/or how the Idaho Prescription Monitoring Program has impacted public health in Idaho (e.g. decrease or increase in overdose rates, "doctor shopping," prescribing volume, etc.) over time.

The Board does not have any records responsive to this section of your request.

11. Any and all records 2006-present of notification to law enforcement about information in the Idaho Prescription Monitoring Program Medical Review Group or other channels, including but not limited to how many times law enforcement agencies have been notified about information in the Idaho Prescription Monitoring Program, and which agencies have been notified.

The Board does not have any records responsive to this section of your request. Please refer to those Board records produced in response to section 14 of your request pertaining to law enforcement PMP inquiries.

12. Any and all internal policy, memoranda, and/or training documentation describing how entities outside of Idaho State Board of Pharmacy, including law enforcement, may obtain access to information in the Idaho Prescription Monitoring Program, including but not limited to the rules, regulations, and procedures of the Medical Review Group.

The Board's records responsive to this section of your request are attached. Please also refer to Board Rule 27.01.03.500. The Board's rules are publicly available online at <https://adminrules.idaho.gov/rules/current/27/index.html>.

13. The legal authorization for sharing Idaho Prescription Monitoring Program information with the law enforcement entities.

Please refer to Idaho Code §§ 37-2726 and 37-2730A, which are publicly available online at <https://legislature.idaho.gov/statutesrules/idstat/Title37/T37CH27SCHIII/>. Please also again refer to Board Rule 27.01.03.500.

14. Any and all records showing how often law enforcement entities or individuals have requested information or records from the Idaho Prescription Monitoring Program, or made electronic queries of the system, including but not limited to what types of information or records have been requested, which agencies have made the requests, the percent of requests that were accepted versus denied, temporal trends, the form of the request (e.g. subpoena, warrant, etc.), and whether the requests were granted or denied.

Certain Board records responsive to this section of your request are attached. As you can see from the attached, since 2015 the Board has received over 22,550 requests from law

enforcement entities for access to Idaho's PMP. Each law enforcement request for access to Idaho's PMP contains personally identifiable patient information exempt from public disclosure.

As stated in response to section 7 of your request, Idaho Code section 74-102 authorizes the imposition of fees arising from the costs to Idaho taxpayers to respond to a public records request. In order to provide you with copies of those 22,550 law enforcement requests for Idaho PMP access, Board staff estimates approximately 1,127.5 hours of staff time will be needed to assemble, review, and redact those records (total staff time based on a minimum estimate of three (3) minutes per law enforcement request).

Proceeding with this section of your request will require a significant amount of Board staff time, which in turn will require a significant payment from you to cover those costs. Board staff encourages you to contact Ms. Anderson to discuss options for narrowing this section of your request. Thereafter, if you wish to proceed with this section of your request as written, Board staff will prepare a cost estimate, which will require advance payment, and a lengthy records production schedule.

Please notify Board staff at your earliest convenience how you would like to proceed with regards to sections 7 and 14 of your request. If Board staff does not hear from you regarding these sections in the next thirty (30) days, Board staff will consider those sections of your request withdrawn.

Sincerely,

A handwritten signature in blue ink, appearing to read "Berk Fraser", followed by a long horizontal flourish.

Berk Fraser, RPh
Deputy Executive Director

Attachments
